

COMMISSIONERS APPROVAL

ROKOSCH

GRANDSTAFF *cg*

THOMPSON *AT*

CHILCOTT *g*

DRISCOLL *KD*

PLETTENBERG (Clerk & Recorder)

Members Present.....Commissioner Jim Rokosch,
Commissioner Carlotta Grandstaff, Commissioner Alan Thompson, Commissioner Greg
Chilcott and Commissioner Kathleen Driscoll

Date.....September 17, 2007

Minutes: Glenda Wiles

The Board met to continue their public hearing on the Request for Commission Action for the Saddle Hills Subdivision and Variance Request No. 1. The first public hearing was held on September 11, 2007.

Commissioner Rokosch called the meeting to order. No conflicts of interest were noted. Commissioner Rokosch stated they will hear full public comment on variance #1 and the subdivision, and then the Board will address variance #1.

Terry Nelson asked about the process for variance #1. Commissioner Rokosch stated they will take public comment then address variance #1.

Staff report: Renee recapped the decision of variance #2 and the petition to alter Upper Woodchuck Road. The developers have proposed new mitigation for chip seal on Eight Mile Road in order to mitigate the impacts of granting variance #1. Road Supervisor Dave Ohnstad, in an email dated September 13th, stated he would not accept the mitigation and recommended denial of variance request #1.

At the last meeting, a member of the public brought up a road maintenance agreement between Missoula and Ravalli Counties. After visiting with personnel from the Road Departments in both counties, they have found an agreement exists for Lower Woodchuck Road, not Upper Woodchuck Road.

Brett Badow, equity partner of Saddle Hills LLC, stated they are 'not corporate developers looking to make a quick buck and run'. They want to create a neighborhood where they will live. They started this process in 2005 with an on site visit with the planning office. They were under the old subdivision regulations at the time and were in compliance with those regulations. However, the regulations changed and they spent a lot of time and effort to update their proposal and follow the new regulations. During the course of that process they have worked with numerous agencies to meet those requirements and he is proud to say they have met those requirements. They (the developers) call this home and see these planning issues as very important. He also noted they have met with various land owners who represent 5,000 contiguous acres; they have met with the Elk Foundation to discuss wildlife corridors etc. They are proponents of wise land use and zoning. They have made many concessions to the application process and now the financial viability of the entire project has been jeopardized. They thought they would be 'dubbed as heroes' in regard to spending more money on Upper Woodchuck Road, but have not. They have agreed not to do anything with Lot 20 which represents 40% of the total amount of acreage. They feel zoning will address many of the land use issues. In regard to parks, the smallest lot is 2 acres. They have dedicated park land allowing for open space and wildlife and will donate \$7,500, which exceeds the requirements. He thanked the planning staff and Board of County Commissioners for what they do. He stated he and the other applicants realize what the Commissioners do is not easy.

Attorney Bill Van Canaghan represents the applicants. He felt compelled to speak today as a follow up to the September 11th hearing. He felt there were some unfortunate issues that occurred that day and he wanted to relay to the Commissioners they have respect for the integrity for this process. His law firm has enjoyed a good relationship and extensive history with Ravalli County. His partner, Attorney Milt Datsopoulos, has worked hard to develop these relationships. His own family has a relationship with this county, as his grandfather settled in this valley as a farmer and his mother rode a horse to school in the valley. They do not approach these development issues with callous indifference. He stated the County's concerns are important to him and his clients and they understand this it is a rigorous process. He is not here to encourage or create litigation in any way. His law firm feels litigation should be the last resort. He and his clients are not for extraordinary or special treatment, just fair treatment. He asked the Commissioners to evaluate the application and the evidence the consultants provide; making a fair determination not based on personal belief or preference. Also to consider these families who have been involved in this application for the past 2 ½ years, as they have worked within the county regulations setting the project back at significant delays. He wants open and complete discussion.

Terry Nelson went over the six criteria. He stated the first pre-application meeting was held December 2005 and they have been through two sets of county subdivision regulations since that first submittal.

Ag: This parcel does not contain any soils of state wide importance. No water rights exist and thus the property is not viable for agriculture. The property has not been used

for pasture, simply for housing and open space. To the south there is some pasture. One issue is the dust on agricultural crops. The existing dust would be reduced and a full weed control plan has been approved by the Weed Board. There is little evidence to show any impact on agriculture. With the mitigation of hard surfacing the roads and a weed plan, the proposal will improve existing conditions.

Ag water facilities: There is a single ditch that runs through six of these properties. This has been approved to be re-culverted. There is not an existing easement, but one will be provided for the downstream water users. The Planning Board found no impact on Ag water uses. With the irrigation easement, culverting and the limit of irrigation on the properties, there should be no impact.

Local services: This was an issue with the Planning Board. The property is serviced by the Florence Fire Department and will not utilize any public sewer or water. Each lot will have its own well and septic. Bitterroot Disposal will deal with garbage. Phone and power are provided by profit companies. The internal roads will be constructed to full county standards with a Homeowners Association dealing with the maintenance. The postal service has requested cluster mail boxes. They have emergency services from several places. There are some private and for profit agencies that provide services. Two hospitals in Missoula (Care Flight sent an email stating their service can be there in less than 10 minutes) and one hospital in Hamilton will provide service. The Fire Department has stated they see no problems. There has been no response from the Sheriff's Office. This is within Florence Carlton School District and they anticipate 8-10 students. This will be an upper end housing development and the likelihood of children is decreased. The application offered \$250.00 per lot which was an acceptable standard and they realize standards have changed, thus they offer \$500.00 per lot. The mitigation offered through the variance applications will provide much more than the pro rata on Upper Woodchuck and Eight Mile Creek Road (pending the variance on Eight Mile Creek Road). The developers are willing to donate \$500.00 per lot to the Sheriff's Office and \$500.00 to the Fire Department but would like to see a \$500.00 per lot or in kind exchange for some land donated by the developers for a fire substation. The developer will ensure that addresses are posted when construction begins via the covenants. Any driveway over 150' must comply with the Fire Departments' regulations. There will be motion lights and neighborhood crime watch. Based on the type of homes, there will probably be some home alarm systems. They also have documentation from the 9-1-1 Center stating they usually have an officer to the north in the Stevi area thus response time is generally 15 minutes. This is not new information, just a stated fact. Terry also noted a slight error in the original application; it stated the fire department is 6 miles away when it is only 5. The Fire Department stated they can fully service this subdivision.

Natural Environment: The natural environment addresses the weed plan which has already been worked on. The no build alteration plans help to protect the natural environment. The covenants will only allow for ¼ acre of irrigation on each parcel, and the hard surfacing of roads will help protect the natural environment. In regard to the view shed; the regulations address scenic sites. Terry stated this subdivision was not

under the new regulations at the time of application submittal. This is the first time view shed has been brought up at all. He could understand view shed concerns if it is a subdivision such as Trapper Peak, but no evidence has been brought forward that this property is a scenic site.

Terry produced some photographs which show the landscape in the vicinity of the property. There are no significant scenic view sites. They have a covenant for lot 20 which restricts the building site to below 3,880 feet of elevation, which will also help with wildlife. Zoning will look at view sheds and any future zoning will deal with wildlife and view sheds. The covenants stated the residents must be built to surrounding landscape. Thus any housing must blend in with the natural environment. If scenic view shed is used as a review criterion; the Commissioners must decide if the property is a scenic site and if so, there is mitigation to deal with the impacts.

Wildlife and wildlife habitat: This is within wildlife winter range; the developers had a private wildlife consultant go out on site. The Planning Board discussed the covenant on Lot 20 which prohibits future development until the zoning issue is put into place. Mr. Vore of Fish, Wildlife and Parks has had his concerns addressed today. The Montana Heritage program agreed there would be no impacts to any special species of concern. Fish Wildlife and Parks suggested no build zones which have been addressed. Thus with the Lot 20 covenant (which is 40% of subdivision), steep slopes and protections of drainages for no build zones and covenants, this criterion is mitigated.

Public Health and Safety: Terry stated Upper Woodchuck Road is not a county standard road. The variance addresses public safety by the realignment and hard surfacing of Upper Woodchuck Road, along with widening the road to satisfy the Fire Department. This realignment on Upper Woodchuck is a bonus to Ravalli County. All interior roads are to be fully paved. Emergency services from hospitals plus life flight are available. And the safety issues are addressed with no build zones.

Commissioner Rokosch called for any questions regarding variance # 1.

Public Comment was called for.

Lee Keirig, an Architect and member of the Planning Board, stated he is present at this meeting as a member of the public. He expressed his passion for the future of the valley. He sees a dangerous precedent being set as the Growth Policy has set forth the six criteria and he would like to focus on issues of sustainability and protection of public health and safety. In regard to scenic values, the Growth Policy states the criteria is defined as scenic and historic resources. The entire eastern front of this valley should be considered for its historic and scenic value. This is why most of us live here. People come here for the wilds of the area and open lands. He stated we sit on the door step of the largest continuous wilderness of the lower 48 states. Clean air and scenic views are part of this environment. The location of this development is one of many that are coming in line for this process and east of Florence is being hit hard right now because it is close to Missoula. This area will end up being like the South Hills of Missoula which is a

mistake. This type of growth will creep along the valley corridor and become extremely visible. The issues of public health and safety protect the public from risk and man made exposures. Lee felt psychological exposures are significant and thus harmful to the sustainability of Ravalli County. He felt the county is on the threshold and we need to protect the quality of life and the future life of the valley. He felt the growth issue is about perpetuity, not just what happens in 20 years. Lee presented some maps for visual reference (taking the Growth Policy under advisement as it uses the word sustainability). In regard to the mapping, green is the color where the land is protected. It is essential the developers target the right markets of land. There is always good profit to be made in a free market system. 25 years ago his parents moved to some rural farm ground in Washington. Sequim Valley is now ruined because they never took into account the resources such as water, space, trees etc. There is an appropriate place for high density. There are new issues such as how much the land can support dense developments. Lee took projections of growth and applied them in a linear fashion (as seen in his maps). He simply projected the growth producing a visual graphic of what they might be seeing in the valley. He stated they have an opportunity to create a sustainable community. Big development brings 'stuff' to the land for short term benefit but yields long term degradation. He presented three maps showing currently there are 42,000 people in the valley; in 2065 there will be 100,000 people; and in 2136 there will be 200,000 people. His question is how much is too much and how many is too many. He asked at what point, will we have overburdened the land and what it can give to us. Lee felt there is still room for people to live here but we must deal with the density, not deal with sustaining the area. The earth can not sustain itself in this kind of manner, and the issue can start here. Appropriate design creates art on the land and we either seize it or ruin it. He stated the idea of the 'here and now is good', there is still a lot of room, but there is a point where we will go over the balance and the land will not be able to support any more. He stated he 'implores the county elders to use their wisdom looking out for the future children'. We have this opportunity and obligation to say no to business as usual. He does not mean to single out any particular people by his comments here today; rather this subdivision is the first one of many that is lining up. He felt compelled to come here and address this because the Growth Policy is to protect the public from undue risk. This is not about 10-20 years from now, it is about perpetuity. As an architect he is held to protecting the public through a mountain of codes. Creating art on the land is one thing people do not think about.

John Vore of Fish Wildlife and Parks displayed a 'Think Habitat' bumper sticker. He stated House Bill 526 developed a statewide habitat plan. The habitat most at risk in Montana is the inner Mountain Grassland. This statewide plan was developed in 1993 and while it did have a sunset clause they still abide in those plans. He stated they recognized the encroachment on this habitat is a major impact on the wildlife. Therefore they developed a conservation strategy for special species of concern and habitats that are in special need of attention. These are graded in tiers for the obligation of conservation actions. This area is within our focus, and is not new to Fish Wildlife and Parks. Those areas that disappear the fastest are these grasslands. A ½ mile from this proposed Saddle Hills development (in Missoula County) is another proposed subdivision. Near these locations, he also made a site visit to the Bitterroot Ranch and there was discussion of

whether it was elk range. He found many beds of elk and deer and signs of the type of food they commonly eat. While not in Missoula County, this location is within the same ecosystem. John relayed the photos of this proposed subdivision show no development, but there is some habitat for elk and deer. As of this date, this area is functional and occupied by elk and deer. He addressed the south hills of Missoula. He starts at that location for his flights to count elk. In the last three years, and concurrent with the development, he now sees no elk in the south hills of Missoula. Thus he can not help but think that the development has had some impact. This is known as elk and deer winter range and habitat. In regard to a precedent, this proposal is for development in an area that is not currently developed. He stated his agency is concerned with any development that occurs in wildlife habitat. Development has been close to towns and infrastructure, but in the last 10-15 years the development is outside of the infrastructure and into the elk and deer habitat, especially in winter range. In Missoula County they identify the area from Miller Creek South to Eight Mile. Their Growth Policy states the habitat has priority. They suggest one house to 40 acres. If development is going to occur, his agency would like to see it clustered. Therefore their comment is to keep the development on the south portion of the land which will allow elk and mule deer winter range. In regard to wildlife corridors, preserving corridors does not maintain functional elk and deer winter range. Elk and deer use the area at a landscape level.

Terry Forest addressed Eight Mile Creek Road. Long term improvements will require a significant amount of developers and development to occur. He is working with a group of people that represent 5,500 acres and they have tried to get the county involved in an RSID, but the county does not seem to want to be involved. This subdivision is 20 lots and having a subdivision of 21 lots dividing the cost of a 3 million dollar improvement to the roads would not be cost effective to the developer. He would like to see something happen on Eight Mile Creek Road. If a developer can not obtain additional right of way, the county should assist them in getting that right of way to improve that road. Terry stated these 20 lots create a pro rata share of monies that goes to the county and the county does nothing with the money on that road. He stated what the developer is proposing will have a direct, positive impact on the road. He also added it seems like the rules for subdivision do not allow the landowners the ability to get anything done on the roads.

No more public comments were made. Recess was taken.

Developer's rebuttal. Terry Nelson addressed Lee Keirig's concerns. Terry stated the issue of view shed etc., are county wide zoning issues which are not specific to subdivisions, and thus need to be addressed throughout the zoning process. The subdivision regulations require soils data and species of concern data from the Montana Heritage Program. They make their decisions based on that evidence. There has been no evidence this is a scenic site. If they need to address the entire east side in regards to view shed, it must be written down in the regulations so the applicants and consultants can follow the requirements. Terry stated this subdivision is adjacent to the Aspen Springs proposed development, but there are no direct neighbors protesting. He stated while the area has had opposition, there has been no opposition from the neighbors.

In regard to Mr. Vore's testimony, in July 2006, he received a letter from Fish, Wildlife and Parks which Mr. Vore just relayed. (Terry then read the letter). Fish, Wildlife and Parks wanted the development on the lower southern portion with a conservation easement on Lot 20 for one residence. Fish, Wildlife and Parks asked that the house be placed on the lower part of the lot. The topographic map shows the drainage goes down hill. If seasonal water is present, and in order to protect the drainage, the developers are suggesting a 50' no build/alteration zone from each side of the drainage with protective covenants. Terry stated residents need to understand how to live with wildlife, and the development includes a provision in the covenants recommending homeowners address pets, garbage etc. They hired a biologist who agreed with Fish Wildlife and Parks. Thus the developer has addressed the mitigation. Terry stated he understands the county might want more wide open space and Lee wants a lot more of the east side to be wide open, but that is a struggle with personal property rights. He stated he has presented the evidence to show the wildlife issues have been mitigated.

Bill Van Canaghan thanked Lee for his presentation. In regard to the scenic view shed, many people have an interest in this but it is vital that this body apply the law appropriately. It is troubling that this might fit into criteria number 6 for 'man made natural hazards' which would be a severe legal strategy and just flat wrong. He requested the Commissioners look at the review criteria and apply the criteria in the manner in which they should be applied. One issue might be the historic sites and Mr. Nelson addressed that regulation. This should be dealt with in the zoning process. The Planning Board addressed this in their meeting and the concept of known scenic sites does not translate into view shed in the valley. It has not been incorporated into the regulations. If the county wants to deal with this issue on a long term basis it should be incorporated in the regulations. He has not seen anything today that would result in a denial of this subdivision. He asked the Chairman if they could respond to the view shed issue when it is discussed by the Board. Jim indicated they would have that opportunity.

No other rebuttal comments were made. Public comment was then closed.

Commissioner Rokosch stated the Planning Board passed a recommendation of denial within a 4-3 vote (one of the 3 votes cast against the recommendation was Les Rutledge. Les then told Staff that he had misunderstood the motion and voted against it, but intended to vote for it.) In regard to the variances, the Planning Board voted unanimously to approve them with conditions for both variance #1 and #2. Commissioner Rokosch asked for any Board discussion.

Commissioner Thompson clarified the Planning Board vote on the motion to recommend denial. Two members of the Planning Board were absent and the initial vote on a motion to conditionally approve was 4-4. Then a member left who had voted to recommend approval and another vote was taken which resulted in the 4-3 vote to recommend denial. It is unknown what would have happened if all members were present. The Planning Board gives recommendations to the Commissioners. Sometimes the Commissioners agree and sometimes disagree with the Planning Board. The Planning Board does not

hear all the mitigation issues the Commissioners hear. It appears the Planning Board was split down the middle. It is the Commissioners rightful duty as an elected body to make their own determination.

Commissioner Rokosch stated there was a discrepancy in the Planning Board minutes regarding the review criteria, the criteria voting sheets, and the request for commission outline of the Planning Board's recommendation. Renee stated the Request for Commission Action is correct. The new secretary was confused and reversed the significant votes and non-significant votes under the six criteria in the Planning Board minutes.

Commissioner Rokosch asked Lee for any clarification from Planning Board. Lee stated Renee is correct.

Commissioner Rokosch asked Bill to address Planning Board minutes or recommendations.

Bill Van Canaghan stated the Planning Board is by statute an advisory board and the Commissioners have the ultimate decision making authority. Further, it would be incumbent upon Commissioners to provide Planning Board advice with the appropriate weight after consideration of their process and the transcript in which they handled the merits of the review criteria. Bill also noted the regulations deal with known scenic sites and do not translate into view shed from the valley. He also noted when it comes to interpretations of the law; the court will not defer to the Commissioners, but rather review how the law was applied with correctness. Bill stated if we accept this improper construction, we impose a subjective standard which makes it difficult for a lay person to deal with. The transcripts show the regulations do not include the view shed in the six criteria. Also if the Planning Board interpretation of Section 3-2-8 (b)(N)(D)(6) is right, this regulation is unconstitutional as it is void for vagueness and must give the lay person fair warning at the inception of the process. It can not be arbitrary and capricious. The aesthetic regulation can be arbitrary and has been considered by numerous courts and struck down based on void for vagueness. There have been other subdivisions with the issue of view sheds approved. The Commissioners need to follow established precedent. The Planning Board addressed where view shed should be placed and that transcript was confusing and wrong. Bill felt the Commissioners need to consider the law appropriately.

Commissioner Thompson stated these are general comments. In regard to view shed, 73% of our valley is federal lands, 2% is state lands and the balance is private lands that are mostly located in the center of the valley. Most people move here because of the scenic view sheds but those exist on the federal lands on both sides of the valley. The Board of County Commissioners has worked on view sheds in the past and has adopted two ordinances (Bill Boards and Cell Towers with numerous restrictions and guidelines). He stated he hesitates to look at this particular view shed in light of the way the valley has developed. Also, the Planning Board addressed emergency vehicle access, and hearing that the distance from the fire department is five miles which does not seem to be

such a serious detriment in an emergency situation. In regard to Eight Mile Creek Road, it is not the county's responsibility to bring Eight Mile up to county standards. He also noted the park land dedication, and the types of lands that are dedicated. He does not believe that open space is park land. There are some steep slopes on this dedicated park land with some ditches that run thorough it. He asked where the high speed transmission lines are located. Terry pointed to this area. Commissioner Thompson stated the Park Board recommendation was to seek cash in lieu. He would also note the Planning Board recommendation for accepting the two variances was an 8-0 vote on both of them.

Commissioner Rokosch stated it might be appropriate to deal with the variance first (#1) then the subdivision. Alex stated if variance #1 is approved you can move to the subdivision, if not, the Board needs to decide if the application is sufficient.

Commissioner Driscoll produced a map in regard to how the variance will affect the growth of the area. There are numerous subdivisions in the area and this decision will make a difference on what is happening on the road. She stated the Park Board utilized this type of map for upcoming subdivisions. Commissioner Driscoll stated the type of roads developed into the infrastructure will have a lot to do with the growth we have in the valley. Commissioner Chilcott stated he has been counseled in the past that the Board does not look at the cumulative impact of the subdivision. Commissioner Driscoll stated she is not talking subdivision, she is talking variance.

Commissioner Grandstaff stated she checked out the ownership of the adjoining lands to this proposed subdivision. She found all the land owners seem to be related (Allen Bradley and relatives; and the Sardots). It was noted these people are signers for the road petition to realign Upper Woodchuck Road as well as the Bitterroot Development, which is Allen Bradley. Commissioner Grandstaff stated she did not think the variance should be granted because the proposal is part of a larger development plan.

Commissioner Rokosch stated if the Commissioners relieve the developer of their responsibilities of Eight Mile Road, the improvements are passed on to others. Commissioner Grandstaff stated they are developing this area by piece meal. Commissioner Rokosch stated the pro rata share does not necessarily yield the improvements needed. Commissioner Driscoll stated in regard to the variance, and being responsible to the infrastructure, she felt this information is pertinent to the area.

Commissioner Chilcott stated he already stated his opinion at the last meeting, in that the realignment is a benefit to the tax payers and residents of Eight Mile. It is a generous offer of the developers and gives an increased level of service.

Commissioner Driscoll stated the chip seal does not do what is necessary for the long term. Commissioner Chilcott stated it far exceeds the level that is there now. The dust particulate is helped by the chip seal and improvement of grade on Upper Woodchuck and gets the county into a position to be able to improve this road by the year 2015. Commissioner Driscoll stated due to the lag time of what is there today and reasonable improvements, this is a significant investment to our infrastructure.

Alex suggested the Commissioners review the proposal against the variance criteria.

Commissioner Rokosch addressed Commissioner Chilcott's concerns under criteria #2. This variance is for Eight Mile Road. Commissioner Chilcott stated the developers are offering one mile of chip seal. Commissioner Rokosch stated the Road Department and Planning Department do not recommend approval of the variance. He also referred to Page 27 in the staff report and correspondence from the Road Supervisor for additional impacts of traffic. The variance does not show undue hardship. He noted the Board has a conflict as Commissioner Thompson stated it is important to give due weight to both the planning staff and planning board considerations.

Commissioner Chilcott stated writing a check for \$63,000 will not improve the public health and safety on Eight Mile Road. A short term fix is better than the money. The improvements they have offered for mitigation would give our citizens in increased level of public safety.

Commissioner Driscoll asked to review the variance criteria check list.

Five Criteria:

Granting the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties: Commissioner Chilcott and Commissioner Thompson agreed with the statement due to mitigation offered. Commissioner Rokosch, Commissioner Driscoll and Commissioner Grandstaff did not agree because it does not follow the Road Supervisor's comments and Commissioner Rokosch stated no mitigation will occur for Eight Mile Creek Road. For Commissioner Grandstaff, it is the future development that comes down the pike in Eight Mile; this is a piece meal approach to the development. Renee asked for confirmation that Commissioner Grandstaff stated that if the variance is granted, these developers would be responsible for improvements. **The Commissioners determined (3-2) that granting the variance would be substantially detrimental to the public health, safety, or general welfare of injurious to other adjoining properties.**

Unique to property: Commissioner Thompson, Commissioner Chilcott disagree, Commissioner Grandstaff and Commissioner Driscoll disagree. Many properties feed into a low volume that feeds into a major collector road. **The Commissioners unanimously agreed (5-0) there were no unique conditions.**

(Renee suggested the Commissioners clearly list a reason why or their findings).

Physical Conditions prevent the Applicant from meeting the regulations:

Commissioner Thompson disagrees, nothing particular to this property in which pro rata should not apply. Commissioner Rokosch and Commissioner Chilcott disagree with same reasons; Commissioner Driscoll and Commissioner Grandstaff disagree. **The Commissioners unanimously (5-0) agreed there were no physical conditions.**

The variance will not vary from any zoning regulations or the Growth Policy:

Commissioner Thompson agrees. The property is in line with the resolution requiring one dwelling per two acres and with paving of road/chip sealing. Mitigation provides for the necessary infrastructure and improvements will be made now rather than later.

Commissioner Chilcott agrees with same reasons. Commissioner Driscoll disagreed. Commissioner Grandstaff also disagrees. She stated granting the variance would be in conflict with county wide goal number 4 of the Growth Policy. Commissioner Chilcott asked how soon pro rata money would be applied to Eight Mile Road. The applicant's proposal will provide for public safety and infrastructure now. It does follow 4.4 for existing infrastructure. Commissioner Rokosch stated they have already approved Variance #2.

Alex suggested Commissioner Rokosch read it a little more broadly. Then every variance would not be approvable. He advised the Board they need to look at it in terms of infrastructure. Commissioner Rokosch stated county policy 4.1 and 4.2 addresses impacts. Commissioner Grandstaff stated according to County Attorney George Corn, they may review this for cumulative impacts on a variance but not on a subdivision.

Alex asked if there is an impact by not taking the pro rata. He also cautioned them to be careful about being specific; as it is the actual broad effect. Commissioner Rokosch stated if they do not get this amount of money it will not be there in the future to accumulate with other pro rata shares. And without accumulating pro rata, the County will not be able to make the changes necessary in the future. Commissioner Driscoll stated the Road Supervisor says the 'pro rata does for the larger good for the county'.

Commissioner Chilcott stated the tighter nexus they utilize, the better off they are in making this decision. He also noted they need to identify the closest nexus instead of the broader one. Commissioner Driscoll stated she could do that in other areas or projects but not according to what developments that are coming in and 'waiting in the wings' in that particular area.

Commissioner Thompson stated this is a mixed message – if we improve the road, there will be more subdivisions? Or should we accept pro rata monies which will improve Eight Mile – it is the same thing.

Commissioner Rokosch stated with 6-20 units, the roads should be paved. 21 or more lots require proper easements and roads are improved to meet county standards.

Commissioner Chilcott advised Commissioner Rokosch 'you are either pregnant or you are not' and this type of discussion is exactly what Commissioner Thompson was referring to.

Alex advised the Board they can not consider the requirements of 21 lots as this is a 20 lot subdivision. Commissioner Rokosch requested his comments be stricken. **The Commissioners determined (3-2) that granting of the variance would vary from countywide goal #4 of the growth policy. There would be no pro rata funds to**

accumulate with other pro rata funds for future improvements to Eight Mile Creek Road. Pro rata is for the larger good of the county and based on a recommendation from the Road Department.

The variance will not cause a substantial increase in public costs: Commissioner Thompson and Commissioner Chilcott agreed. The county would be accepting hard surfacing of a particular road that will minimize costs to public safety and agriculture. Commissioner Driscoll disagreed because the Road Supervisor (Dave Ohnstad) has said the road way shoulder degradation and BST (Chip Seal) will not give the structural improvements needed. Commissioner Grandstaff disagreed based on Dave's comments and Commissioner Rokosch also disagreed. Commissioner Driscoll stated the road needs to be done right, as it pays off in the end. Commissioner Grandstaff stated the public will incur more costs because one mile of chip seal is not adequate. Alex advised the Board they need to review whether the variance is creating an increase in public costs. Commissioner Rokosch asked about rights and who will pay those additional costs – it is the tax payers. Alex requested the Commissioners to identify those costs. Commissioner Rokosch stated the costs are what ever the necessary maintenance according to the Road Supervisor is. Commissioner Chilcott stated the improvements would not be addressed until 2011. Commissioner Driscoll stated a county road is 24' wide and would cost about \$320,000, but that does not include the increasing cost of oil. This variance does not offer anything near this. Commissioner Thompson stated those numbers cited by Commissioner Driscoll are accurate if you have to build the road base and buy easements etc. The cost varies from road to road. Maybe it could be done for half as much.

Alex stated that helps but the Commissioners need to explain in detail. He asked them if they deny the variance, what happens to Eight Mile Creek Road. There would be money in a pro rata pot. Yes, it will be a number of years before anything is done. Commissioner Rokosch stated the costs would be spread out. Alex stated there will be costs to other land owners.

Commissioner Driscoll stated there should be a shared amount of money. The Board looked at the RSID issue and it did not work out due to the lack of number of home owners that would not allow the bonds to be purchased. If they allow this variance, it will be a huge affect on the home owners that are there.

Commissioner Rokosch stated this project will increase the traffic now. If they do not contribute to the necessary infrastructure, it will be passed on to the tax payers.

Commissioner Chilcott stated the developers are proposing to take a third of the existing road that exists now and it is not in good shape. This will increase its life to at least five more years, thus decreasing the public costs, and it gives the county a band-aid until they can come up with the money in order to do the job. It gives the citizens one third less to have to do. **A majority (3-2) of the Commissioners determined there would be a substantial increase in public costs. The proposed mitigation is not adequate.** The developer needs to contribute fair share towards road improvements to Eight Mile Creek Road. The additional traffic caused by the subdivision will degrade the road with no pro

rata funds to improve the road. Commissioner Chilcott stated he agrees overall this is not a negative to the infrastructure.

Commissioner Grandstaff made a motion to deny the variance request from paying the prorata share on Eight Mile Creek Road based on failure to comply with review criteria 1, 4 & 5 referencing the previous criteria discussion. Commissioner Driscoll seconded the motion. Commissioner Grandstaff, Commissioner Driscoll, Commissioner Rokosch voted 'aye'. Commissioner Thompson and Commissioner Chilcott voted 'nay'. Motion carried to deny the variance.

Alex asked if the pro rata estimates are calculated. Renee stated they have been calculated. Commissioner Rokosch stated the subdivision application was sufficient to proceed into subdivision discussion.

Commissioner Chilcott asked if they could expedite this by reviewing the conditions and findings of fact by staff. Commissioner Rokosch stated within the regulations, the Board may consider the Growth Policy comments presented this date, and the Planning Board comments, etc. There is a substantial amount of information beyond the staff report. He suggested they walk through the six criteria. Alex stated if there are findings they want to modify, and make a different finding they may do so, but otherwise they can approve what is there.

SIX criteria:

Commissioner Rokosch in regard to affects on agriculture: This is pasture land and while not of statewide importance, under item #1 in the staff report all the parcels are classified as ag rural and the parcels to the east and west are ag lands (in parcel). Thus he sees this as ag land and sees it as statewide importance, and any increased residential development would have an impact. While not irrigated it does have dry land pasture. The total acreage is 116 with 63 acres being residential. The balance is left in pasture.

Commissioner Thompson stated the NRCS soils report state this land is the lowest tier for farmland and is not the most productive soils in the valley. The ag land was for grazing and you cannot grow a cash crop. There are no water rights thus he sees it as insignificant.

Commissioner Rokosch asked if there should be some offered mitigation with this permanent loss of ag grazing. Commissioner Chilcott asked how many acres per pair you can graze on this land – maybe 10 acres per pair. Commissioner Thompson replied 20-40 acres per cow. You might get three cows to graze during the summer. This property is not good grazing for cows. Commissioner Driscoll agreed no impact to agriculture as they do not have the criteria to Open Lands. Commissioner Grandstaff stated she felt there should be some mitigation offered.

Commissioner Rokosch asked the Developer for any mitigation. Terry stated in light of the history of the property, which has not been grazed; they believe there is no evidence of ag land. Therefore the mitigation of the restriction of lot 20 should suffice.

Effects on ag water: Commissioner Chilcott asked about the culvert on the ditch. Terry stated the ditch will be open except the change in culvert for the reconstruction of the road. Any other changes would require permission from the water district.

Commissioner Thompson stated the residents would have no water rights thus no impact and not significant. Commissioner Grandstaff agreed.

Effects on local services: Commissioner Grandstaff addressed the letter from Joanna Hamilton and stated this letter is disingenuous. Joanna was asked by someone from this project if she could provide response times and she told them she could not respond as she does not know where a Deputy is at any time. If the Deputy was in Stevensville, the response time to Saddle Hills would be 15 minutes. Terry stated the general practice is there might be a patrol in the north area particularly in light of the substation. Commissioner Chilcott stated they have three deputies on every shift, one for each area north to south. When Highway Patrol started their office in Stevensville, they typically patrolled the north area. He is unsure if they have someone in Stevensville at the time.

Commissioner Thompson stated there is no guarantee for any response times for anyone in valley.

Commissioner Rokosch stated there is a verbal offer of \$500.00 per lot contributed to the Sheriff's Office.

Commissioner Driscoll stated she has a lot of concern in this area; as they know they are short on Deputies. Commissioner Rokosch stated frankly cash does not mitigate the level of services needed and this area is remote. Terry stated the developers are cognizant of these concerns, which is why they are working with the Fire District, and require sprinkler systems through their covenants and will have a neighborhood watch in place. The documentation he has shows response time and the mitigation they have proposed has gone above and beyond what other subdivisions have offered. This location is not as far as people would think. It is only 5 miles from fire and ½ mile from an arterial road.

Commissioner Grandstaff disagreed with Terry's information on the location of the fire department. She noted the Missoula County Sheriff's Office will not respond. It seems far away because it is far away. Therefore she felt cash can not even mitigate this.

Commissioner Rokosch stated the fire departments are voluntary. Two weeks ago his neighborhood had a fire and his wife is a volunteer. He found himself as a citizen doing traffic control for over two hours. They had mutual aid and a structure and vehicle were lost. Thus he has real concerns in regard to the agency comments. He too feels cash is not adequate.

Commissioner Grandstaff noted just because there was no response back from Sheriff's Office, does not mean there are no impacts. She stated there are real impacts.

Commissioner Driscoll stated during the budget hearings they heard from the Sheriff and learned sometimes confusion arises due to jurisdiction. She felt the county should have sufficient deputies to cover the needed responses.

Commissioner Chilcott stated when people buy and build out in rural locations; they need to have some responsibility. Government can not provide response to everyone and everything. He suggested they make that a notification. There are benefits and liabilities to that rural life style.

Terry stated the impact fees under SB 185 are voluntary contributions. The rules have been changed during this subdivision process. He does not know what they can pay in order to help the proposal along. The developer is offering \$500.00 per lot to the Sheriff's Office and that is a financial burden but we understand the county's need. He stated they could double that amount if the monies could be paid at the time of lot sale.

Commissioner Rokosch was concerned about the payment upon lot sale because there is a delay in resources which allow for adequate planning. Terry relayed they visited with the developer and they will pay \$500 per lot prior to final approval and an additional \$500.00 at the time of first lot conveyance.

Commissioner Rokosch addressed the computation of data for capital costs of education. For the Florence School District (excluding federal and bond issues) the local and state share is \$10,000 per student. Given that amount, the mitigation offered does not come close to this amount.

Commissioner Chilcott discussed the deficit position that most schools operate on. He discussed the costs of budget for pupils and the ANB money. Commissioner Thompson cautioned the Board to discuss the numbers that fluctuated and the budget amounts for state monies. That is not a good formula; rather it needs to be broad based as it affects all school districts in the valley. Commissioner Grandstaff stated it can not apply to all districts as they all grow and decline at different rates.

Commissioner Driscoll addressed special need students but there are many variables in the costs.

Terry stated they started this application 2 ½ years ago. They looked at common practices at the time and up until today they have seen subdivisions mitigated at \$500.00 per student. He stated this subdivision is not special, so the Commissioners need to come up with an amount, let them know what it is so they can decide what to offer. He stated right now it is simply a 'guessing game' to the developer. Commissioner Rokosch stated he appreciates this and they are working on the impact fees, but they are in transition at the time. What might have been a common practice in the past does not necessarily work today as they have more information today than what they had in the past.

Terry stated this subdivision should have been approved and dealt with long ago; not due to anything the developers have done but due to the length of the process. He asked them

to take that into account. Terry stated they will give the School District \$500.00 per lot on subdivision being filed and \$500.00 per lot on sale of each lot.

Effects on natural environment: Commissioner Rokosch referred to the Growth Policy, Section 5. Number 4 addresses conditions of land, air, water, topography, flood plains, and scenic and historic resources. Therefore, he sees a different interpretation from Terry and Mr. Van Canaghan. Under #10 in regulations for considerations of ecosystems, they have to consider the human eco system and how those resources impact property values of people in the values. When one looks at the MLS the big selling point is the valley views.

Commissioner Chilcott stated he lives next to the Town of Stevensville. He has 20 acres of pasture and across the street, there are ½ acre lots. He stated the residents of the lots like to look at his property. He asked when they sell their lots, will he obtain any of their profit due to his view shed they like to look at. Commissioner Chilcott stated until the county has zoning, they do not have the ability to regulate view sheds. Under 76-1-605 MCA it addresses the land use authority and the Growth Policy. We can not use the Growth Policy to deny the subdivision.

Commissioner Driscoll stated this could be very objective. She wondered how they would come up with findings of fact.

Alex stated if this comes to a court review; the court will look at questions of fact and questions of law. While they are different, they do blend together. No regard to the questions of law - there are questions of view shed and if they are part of the natural environment. The court reviews this without difference. In terms of the Growth Policy portion; he cautioned the Board that they need to be careful as the legislature has tried hard to say "pay no attention to the Growth Policy", but their ability to use it for anything is very limited. He reiterated to the Board, their necessity to be careful as the Growth Policy is the constitution and the regulations are the statutes. So focus on the regulations, let the Growth Policy guide you in terms of zoning and creating the regulations. Do not go back to them and read them literally. Rather, pin your decision down to the regulations.

Commissioner Chilcott stated the ridgeline (view) can be regulated through zoning. Commissioner Thompson stated there are many places one can not see the ridge tops of both sides of the valley. The Commissioners reviewed the view shed for Area 3 which was the back side of the Daly Mansion and being open to see the Bitterroot Mountains. He stated that kind of view shed is appropriate but felt the eastern ridgeline of the entire valley is a slippery slope to go down.

In regard to ground water quality and quantity, Commissioner Rokosch asked if there could be consideration of community systems due to the closed basin.

Nathan Lucke stated there was no DNRC letter suggesting this type of water system be put in place. They have drilled 4 wells that are 300-400 feet in depth. There are clay

layers. In Moiese Meadows there was a concern of drilling deep, and these wells going 300-400 feet in depth provided mitigation measures the Commissioners were concerned with. DNRC allows a categorical exclusion because the wells are so deep and have a protected layer of clay. Therefore there is no need to perform non degradation. Therefore their proposal stands.

Wildlife habitat – Commissioner Rokosch noted the excerpts read by Terry Nelson from Fish Wildlife and Parks. He noted in the April letter one sentence states it is within winter range, and if the development is going to happen, it should be in the southern section of lot 20. The final comments in the July letter show the development goes beyond the footprint and disturbs the elk and deer. Thus the mitigation offered does not reduce the impact. The letter addresses the importance and critical nature of the wildlife and habitat. Even in Missoula County they see some displacement of the habitat due to the subdivisions. He stated the Commissioners have a responsibility to consider these in concern to critical habitat. He stated the impacts are not mitigated.

Commissioner Chilcott stated he has a high level of respect for Mr. Vore. The 1993 policy of the state is they will acquire habitat. If the State of Montana and Federal Government want this habitat, then they should acquire it without taking it from the citizens. He stated the government should not control or dictate.

Commissioner Thompson understands what Commissioner Chilcott is saying, however, he would agree that Fish and Wildlife gave some mitigation measures the developer could utilize for these concerns. He felt they are the experts and he would go along with their recommendation.

Commissioner Rokosch reiterated the agency stated if the Board approved the development, and if the development would happen, then the recommended mitigation should be considered. It is their expressed opinion this proposal is located on elk and mule deer winter range and the subdivision will interfere.

Commissioner Driscoll asked John about the Missoula County Subdivisions and the elk that do not exist there any more. She asked if the elk move. John stated the elk respond to the ripple effect. The effect of the subdivision goes far beyond the subdivision itself. In order to have some modicum, his agency wants lot 20 to be available. He has not seen elk in the last 2-3 years since subdivisions have come in the south hills of Missoula County. In the Graite Creek area there is still elk but there are thousands of conservation easements next to that area. Commissioner Driscoll asked if there is land next to this proposed area that would provide them ground. John stated as far as he knows there are no conservation easements near by. The nearest is the Maclay property which is quite a way to the north. John stated they have no intention of any takings issues. He simply quoted the Montana policy as it focuses on the importance of these habitats.

Public Health and Safety: Commissioner Rokosch stated most of the public health and safety issues have been discussed but he has a concern of severe soils. Commissioner Chilcott stated they have received and discussed notification of that issue. Terry noted

the severe soils are based on steep slopes and they are proposing no build alteration zones. Commissioner Rokosch asked the applicants if they would like to offer any more mitigation.

Commissioner Rokosch asked about the park land and if they would go along with the cash in lieu. Terry stated the park dedication is like the pro rata. They could leave the park land as dedicated but offer about half of what the park land dedication would be. This would be a private park and maintained by the Homeowners Association. Thus they are giving more land and also giving cash to the park board. They are offering \$7,500.00 for cash in lieu. The appraisal is on the land as it sits right now.

Terry asked if there was any other mitigation the Board would like to offer.

Commissioner Thompson asked if there would be improvements such as picnic tables, ball fields etc.

The Developer stated the park is beautiful and has a draw through it. The cash in lieu is not a problem plus they will donate the land as already shown.

Commissioner Chilcott made a motion to approve based on findings of fact in the Staff Report and subject to the conditions in the Staff Report; stating cash in lieu be paid to meet the parkland requirement as stated in the subdivision regulations by appraisal, contributions to the Sheriff's Office and School District be \$500.00 per lot at final plat and \$500 per lot at first conveyance.

Renee also noted Terry wanted flexibility for a land donation to mitigate impacts on the Fire District.

Commissioner Chilcott added to the motion a land donation is allowed as an alternative to mitigate impacts on the Fire District.

Commissioner Thompson seconded the motion.

Commissioner Driscoll stated they need to go through the six criteria and vote.

#1) Commissioner Grandstaff, Commissioner Thompson, Commissioner Chilcott and Commissioner Driscoll found the effects on agriculture to be non-significant. Commissioner Rokosch found to be significant.

#2) Commissioner Rokosch, Commissioner Grandstaff, Commissioner Thompson, Commissioner Chilcott and Commissioner Driscoll found the effects on agricultural water user facilities to be non-significant.

#3) Commissioner Thompson and Commissioner Chilcott found the effects on local services to be non-significant as mitigated. Commissioner Rokosch, Commissioner Grandstaff, and Commissioner Driscoll found them to be significant.

#4) Commissioner Rokosch, Commissioner Grandstaff and Commissioner Driscoll found the effects on the natural environment to be significant; Commissioner Thompson and Commissioner Chilcott found them to be non-significant

#5) Commissioner Thompson and Commissioner Chilcott found the effects to wildlife be non-significant. Commissioner Rokosch, Commissioner Grandstaff and Commissioner Driscoll found them to be significant.

#6) Commissioner Rokosch, Commissioner Grandstaff and Commissioner Driscoll found the effects on Public Health and Safety to be significant; Commissioner Thompson and Commissioner Chilcott found them to be non-significant.

Commissioner Thompson and Commissioner Chilcott voted "aye". Commissioner Rokosch, Commissioner Grandstaff and Commissioner Driscoll voted "nay". Commissioner Driscoll stated on #4, the air quality would be an issue. Motion failed.

Commissioner Grandstaff made a motion to deny Saddle Hills based on the failure to mitigate negative impacts on review criterion: #3 (1) (2); Criterion #5 (1); and Criterion #6 (2) emergency vehicle response time. Commissioner Driscoll seconded the motion. Commissioner Grandstaff, Commissioner Driscoll and Commissioner Rokosch "aye". Commissioner Thompson and Commissioner Chilcott voted 'nay'. Subdivision denied, motion carried.

In other business the Board addressed the approval on Weed Grant monies for Forest Service in the amount of \$55,000.00, supplemental to Weed Department, spread out over three years. Kelliann Morris from the Weed Board was present. **Commissioner Grandstaff made a motion to approve Weed Grants monies and have Commissioner Chilcott sign it. Commissioner Driscoll seconded the motion and all voted 'aye'.**

Due to a family emergency Mike Moore was not available for the interview this date for the Open Lands Board. He is available for this interview on Wednesday at 11:30 a.m. **Commissioner Driscoll made a motion to continue this interview until that date and time. Commissioner Grandstaff seconded the motion and all voted "aye".**

Due to the hour of the day, Commissioner Grandstaff made a motion to continue the discussion of the appointment of a board member to the RCEDA Board until Wednesday after the Mike Moore interview. Commissioner Driscoll seconded the motion and all voted "aye".

The Board then met to discuss Countywide Zoning Planning Consultant Request for Qualification Interview Selection with Planning Director Karen Hughes. Karen presented a suggested set of interview questions and noted the interview committee made the recommendation to interview the following planning consultants:

- Clarion & Associates

- Logan Simpson Design
- Applied Communications

Karen noted the time line is 'ticking away' on this issue and they need to move forward in regard to setting up the interviews.

Commissioner Driscoll made a motion to accept the interview committee's recommendation of the above named planning consultants and move forward on the interview process utilizing the set of interview questions as presented by Karen. Commissioner Grandstaff seconded the motion and all voted "aye". Commissioner Chilcott was not present for this meeting.